Subject Index

Page

Introduction 2

I. The federal question was raised in a timely manner in the state court 2

II. This loan and pledge transaction cannot be justified as an exercise of the police power 4

A. The settled law 4

B. Application of the aforementioned settled principles of law to the undisputed facts in this case 9

(a) This pledge transaction was not in any manner an integral or necessary part of the stabilization plan authorized by the Prorate Act 10

(b) The various factual assumptions made by the California Supreme Court (majority) as a predicate for its decision were and are entirely unsupported, unfair and unsound 12

1. Assumption that but for this 1938 raisin pledge the raisin market would have collapsed 12

This unwarranted assumption of fact by the California Supreme Court in and of itself is a denial of due process 15

2. Assumption by California Supreme Court that this "surplus" was "contributed" by the growers to the Zone, for use in obtaining the maximum economic return on the "free" portion of the crop 19

3. Assumption by the California Supreme Court that the "surplus" portion of the crop is "waste" 21

This pledge transaction was fundamentally inconsistent with the basic spirit and purpose of the Prorate Act because it involved an attempted delegation of trust duties of the Zone officials to strangers 25

Conclusion 32

Table of Authorities Cited

Cases

	Pages
Agricultural Prorate Commission v. Superior Court, 55 P. (2d) 495, 5 Cal. (2d) 550	8, 9, 11, 21
American Smelting Co. v. Baldwin, 287 U. S. 156	4
Baltimore & Ohio R.R. Co. v. U. S., 298 U. S. 349, 80 L. Ed. 1209	16
Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 50 S. Ct. 451, 74 L. Ed. 1107	3
Chicago B. & O. Ry. Co. v. City of Chicago, 166 U. S. 226	5
Grannis v. Ordean, 234 U. S. 385	4
Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U. S. 358, 53 S. Ct. 145, 77 L. Ed. 360	3
House v. Mayes, 219 U. S. 270, 55 L. Ed. 213, 31 S. Ct. 234	6
Jay Burns Baking Co. v. Bryan, 264 U. S. 504, 44 S. Ct. 412, 68 L. Ed. 813	7
Knight v. Eureka, 123 Cal. 192	28
Lawton v. Steele, 152 U. S. 133, 38 L. Ed. 385, 14 S. Ct. 499	7
Lisenba v. People, 314 U. S. 219, 62 S. Ct. 280, 86 L. Ed. 166	2
Meyer v. Nebraska, 262 U. S. 390, 67 L. Ed. 1042, 43 S. Ct. 625	7
Missouri v. Gehner, 281 U. S. 313, 50 S. Ct. 326, 74 L. Ed. 870	3
Parker v. Brown, 317 U. S. 341, 63 S. Ct. 307, 87 L. Ed. 315	8
People v. Zimmerman, 278 U. S. 63, 49 S. Ct. 61, 73 L. Ed. 184	2
Saunders v. Shaw, 244 U. S. 317, 37 S. Ct. 638, 61 L. Ed. 1163	3
Scollay v. County of Butte, 67 Cal. 249	28
State of Ohio v. Akron Park Dist., 281 U. S. 74, 50 S. Ct. 228, 74 L. Ed. 710	3

Texts

	Pages
11 Am. Jur., p. 1075, §303	6
12 Am. Jur., p. 313, §621	17
21 Cal. Jur., p. 881, §63	28, 29
16 C. J. S., p. 557, §188	6
16 C. J. S., p. 562, §195	6
16 C. J. S., p. 607, §209	5
16 C. J. S., p. 606, §209	5
16 C. J. S., p. 1265, §622	16
2 Corpus Juris, p. 685, §342	28
46 Corpus Juris, p. 1033, §291	28
Crawford, Statutory Construction, 1940, p. 481, §246	25

Statutes and Rules

Prorate Act, Section 19.1	10, 11
Supreme Court Rule 38 (Section 5)	33

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No.

R. BERNARD DICKEY,
Petitioner,

vs.

RAISIN PRORATION ZONE No. 1, a proration zone organized under the laws of the State of California, et al.,
Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

INTRODUCTION.

The pledge transaction attacked in this case cannot be upheld or justified unless it can be shown that it was a proper exercise of the "police power". Petitioner has briefly set forth in his petition various facts and considerations which show that this transaction cannot be justified under the "police power". Herein we desire to amplify certain of the salient points touched upon in the petition.

However, before discussing this matter of "police power", there is one preliminary matter we will first cover:

I. THE FEDERAL QUESTION WAS RAISED IN A TIMELY MANNER IN THE STATE COURT.

This is true for several reasons.

The first is that the California Supreme Court actually considered and passed upon this federal question. The certificate of the Chief Justice of that Court, filed herewith, shows that the Court, in denying our petition for a rehearing, passed upon and rejected respondent's contention that this statute as construed by that Court violated the Fourteenth Amendment to the Constitution of the United States, because it took his property without due process of law and denied to him equal protection of the laws. (For copy of this certificate, see Appendix this Brief, p. i.) It is settled that said fact alone justifies the United States Supreme Court in assuming jurisdiction. (*People v. Zimmerman,* 278 U.S. 63, 49 S. Ct. 61, 73 L. Ed. 184; *Lisenba v. People,* 314 U.S. 219, 62 S. Ct. 280, 86 L. ed. 166.)

In the second place, even in the absence of any such certificate from the California Supreme Court, it is submitted that under the circumstances of this case the raising of this federal question for the first time in respondent's petition for a rehearing would have been timely. The Fresno County Superior Court so construed this statute as to eliminate any question of its constitutionality. The same is true of the District Court of Appeal. Both of these lower

Courts treated the issue entirely as one of statutory interpretation and adopted an interpretation which made the statute wholly constitutional. Therefore, when the matter came before the California Supreme Court the case still retained its status of being a case in which petitioner was supporting a construction of this statute, adopted by the lower Courts, which obviated any element of unconstitutionality. Petitioner, who was respondent in the Supreme Court, could address himself only to the arguments of the appellant, and these arguments concerned themselves entirely with the meaning and purpose of the statutory provisions. Under these circumstances, the raising of this federal question by the petition for rehearing was timely.

Missouri v. Gehner, 281 U.S. 313, 320, 50 S. Ct. 326, 74 L. Ed. 870;

Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673, 678, 50 S. Ct. 451, 74 L. Ed. 1107;

Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358, 367, 53 S. Ct. 145, 77 L. Ed. 360;

Saunders v. Shaw, 244 U.S. 317, 320, 37 S. Ct. 638, 61 L. Ed. 1163;

State of Ohio v. Akron Park Dist., 281 U.S. 74, 50 S. Ct. 228, 74 L. Ed. 710.

In the last case cited above, it is said that the raising of the federal question for the first time on rehearing was justified because before that moment the question would have been "speculative". (281 U.S. at 79.)

In the case of *American Smelting Co. v. Baldwin*, 287 U.S. 156, at page 164, it was stated that raising the federal question for the first time on rehearing would be justified by "the unanticipated act of the State Supreme Court in giving the statute a new construction which threatened rights under the Constitution".

In the case of *Grannis v. Ordean*, 234 U.S. 385, at page 392, it was pointed out that the rights of the defendant were not infringed by the trial Court in that case.

> "It was the decision of the Supreme Court upholding the notice (i.e., in the instant case, upholding a new interpretation of the statute) that first ran counter to the federal right."

All these facts are united here. A new construction was placed upon a statute by the State Supreme Court, a construction which it would have been in the highest degree speculative—if not impertinent—to anticipate, and this construction for the first time ran counter to what the petitioner submits is his federal right.

II. THIS LOAN AND PLEDGE TRANSACTION CANNOT BE JUSTIFIED AS AN EXERCISE OF THE POLICE POWER.

A. The Settled Law.

It is, of course, well settled that:

> "The right of private property is a natural, inherent and inalienable right. Such right antedates all constitutions, but to insure its continuance, it is guaranteed by the federal and by the

various state constitutions." (16 *C.J.S.*, p. 606, § 209.)

"Due protection of the rights of property has been regarded as a vital principle of republican institutions. 'Next in degree to the right of personal liberty,' Mr. Brown in his work on Constitutional law says: 'is that of enjoying private property without undue interference or molestation'." (*Chicago B. & O. Ry. Co. v. City of Chicago,* 166 U.S. 226, 235.)

"As protected by the various constitutions, property is more than a mere thing which a person owns. The constitutional guaranty embraces the right to acquire, possess, use, enjoy, protect, improve, lease and dispose of property. In addition, the guaranty of property includes the liberty to contract * * * and comprehends, as well, the right to engage in any lawful trade, occupation or business." (16 *C.J.S.*, p. 607, § 209.)

Also well established is the rule that it is not only the right, but the duty, of the Courts to be vigilant and ever watchful to zealously guard the constitutional rights of citizens.

Equally well settled, of course, is the basic principle that all property is held subject to a valid exercise by the state of its police powers, and that any reasonable restriction or infringement upon property rights in the exercise of this police power is *damnum absque injuria.* A correlative of this fundamental principle is:

"It is a general rule that in order for a police measure to be reasonable, the means adopted

must be reasonably necessary and appropriate for the accomplishment of the legitimate objects falling within the scope of the power. In order to sustain legislative interference by virtue of the police power, either by a statute or municipal ordinance, it is necessary that the act should have some reasonable relation to such objects, or, for more specific examples, to the public welfare or public health. Moreover, the law must tend toward the accomplishment or promotion of such purposes in a degree that is perceptible and clear either in preventing some offense or manifest evil or in furthering some such object. *The means employed should not go beyond the necessities of the case.*" (11 American Jurisprudence § 303, p. 1075; *House v. Mayes,* 219 U.S. 270, 55 L. Ed. 213, 31 S. Ct. 234.)

"The limit of a state's exercise of the police power is reached when the regulation transcends public necessity." (16 *C.J.S.,* p. 562, § 195.)

The law on this subject is well summarized in *Corpus Juris:*

"A state may not, under the guise of protecting the public, arbitrarily interfere with or prohibit private businesses or lawful occupations, and any regulation must be reasonable in its nature and directed to the prevention of the evils, and adapted to the accomplishment of the avowed purposes." (16 *C.J.S.,* p. 557, § 188.)

This Honorable Court has on numerous occasions applied and enforced the aforementioned fundamental principle of law, viz.:

> "A state may not under the guise of protecting the public, arbitrarily interfere with private business, or prohibit lawful occupations, or impose unreasonable and unnecessary restrictions upon them." *Jay Burns Baking Co. v. Bryan,* 264 U.S. 504, 44 S. Ct. 412, 68 L. Ed. 813; *Lawton v. Steele,* 152 U.S. 133, 137, 38 L. Ed. 385, 388, 14 S. Ct. 499; *Meyer v. Nebraska,* 262 U.S. 390, 399, 67 L. Ed. 1042, 1045, 43 S. Ct. 625.

A study of the numerous cases and precedents existing in this field of jurisprudence will show that in the final analysis, in each case where a state statute which interferes with private property rights is sought to be justified under the police power, these four questions inevitably arise:

> (1) Is the true objective (as distinguished from the avowed objective) of said statutory plan or transaction that of really protecting or promoting some one of the legitimate "police power" objectives (public health, morals, welfare, etc.)?
>
> (2) Is said program or transaction in question necessary to achieve said objective?
>
> (3) Is it free from arbitrary, unnecessary and unreasonable conditions and restrictions?
>
> (4) Does it merely restrict and infringe upon property rights or does it go beyond this and result substantially in a "taking" of such property?

When judged by these settled criteria, the pledge transaction involved in our case is, we respectfully submit, clearly unjustifiable. It fails to satisfy any of said criteria.

Before undertaking to show this, we desire to point out that neither of the two cases which have heretofore considered the constitutionality of the Prorate Act (*Parker v. Brown,* 317 U.S. 341, 63 S. Ct. 307, 87 L. Ed. 315; *Agricultural Prorate Commission v. Superior Court,* 5 Cal. (2d) 550, 55 P. (2d) 495) involved any matter, question or transaction in any way similar to that in issue in our case.

Parker v. Brown, supra, originated in a Federal District Court, and involved questions of interstate commerce and antitrust law, and did not even incidentally discuss or involve the question of whether or not this Prorate Act was valid under the Fourteenth Amendment as a proper exercise of police power.

In *Agricultural Prorate Commission v. Superior Court,* supra, the constitutional question, insofar as police power was concerned, was whether or not the state had the right to put into effect this statutory proration plan of withdrawing the "surplus" from the current markets, and thereby regulating and controlling the volume of agricultural crops flowing to markets, in order to prevent a "glut" and demoralization of such markets. The theory of that decision was that the economic loss which the people of the state would suffer, if agriculture should be ruined by a collapse of markets due to uncontrolled overproduction and marketing of crops, was sufficiently serious as to justify such legislation as an exercise of the police power.

There is, of course, a vast difference between the statutory plan before the Court in that case (i.e., the withdrawal and impounding of "surplus" crops) which merely restricts and limits the rate and method of marketing, and the transaction which is in issue in our case, a pledge scheme which in effect confiscates and takes away from the farmer, without compensation, a substantial part of his crop in order that it may be used as security for his neighbor's debts. It should be noted that in the *Agricultural Prorate Commission* case, the Court emphasized that:

> "The terms of the Act apply equally upon all the growers, and distributes the benefits and burdens among them in proportion to the amount of fruit produced by them. The act is therefore neither arbitrary nor discriminatory. It cannot be said that any person thereby is denied the equal protection of the law." (5 Cal. (2d) at 583.)

Such an appraisal certainly does not fit the peculiar and unprecedented pledge transaction involved in our case. This transaction was an arbitrary, discriminatory and confiscatory scheme totally unjustifiable under the police power.

B. Application of the Aforementioned Settled Principles of Law to the Undisputed Facts in This Case.

As alleged and shown in our petition, this pledge transaction was not at all necessary to the achievement of the legitimate objectives of the Prorate Act; it formed no part of the stabilization plan authorized by this statute; it had a *private* and not a *public* objective; and it was unfair, unreasonable and un-

necessary. Furthermore, it amounted to a "taking" and "confiscation" of petitioner's property, not a mere restriction, regulation, or minor impairment thereof.

(a) This pledge transaction was not in any manner an integral or necessary part of the stabilization plan authorized by the Prorate Act.

What is the stabilization plan as conceived by the California Legislature and set forth in this statute? Section 19.1 of this Prorate Act (R. 105) covers the whole matter. It authorizes the program committee of the Proration Zone to establish and maintain these "surplus" pools "*for the purpose of minimizing the effect of existing surpluses upon market conditions*" and then specifically provides, in explicit language, that when a surplus pool is thus established, the Zone and its program committee have the following duties and powers:

(1) to receive from each producer his "surplus";

(2) to market this "surplus" *for the account of the producer*, when it can be advantageously disposed of without directly competing with the "free" portion of the crop;

(3) to handle all such "surplus" on "a pooled basis";

(4) to account to the growers for the same "on a pooled basis".

After thus specifically outlining the duties of the Zone in its handling of the "surplus" raisins of Mr. Dickey and his fellow growers, the Act proceeds to

define the growers' rights in this pool in very simple language:

> "Each producer delivering his surplus to a pool shall be credited for his proportionate share of the surplus so delivered." (Last sentence in Sec. 19.1.)

Could there, Your Honors, be any clearer language than this?

The intent of the Act, insofar as such a surplus pool is concerned, is crystal clear. To prevent the estimated crop surplus from glutting the market, the proration plan requires this surplus to be impounded with the Zone. For what purpose? For the purpose of keeping this surplus off the market until such time as it can be advantageously marketed *for the account of the growers.*

This is the plan and method, and the only plan and method, provided for by this statute in the impounding and control of this surplus pool. It is this procedure and plan, and the only plan, which received the approbation of the Court in *Agricultural Prorate Commission v. Superior Court,* supra.

Said statutory plan is a far cry, we respectfully submit, from the pledge transaction and plan involved in this case. In our case, Mr. Dickey is not objecting to those requirements of the law which compelled him, along with all other growers, to impound a substantial part of his crop with the Zone. He duly complied with this legal mandate, and then went about his business, secure in the belief and knowledge that, in accordance with the law, his said property thus

delivered in trust would be preserved and conserved by his trustees, and disposed of, if possible, for his advantage (this could have been done). He does object, however, to this peculiar and unprecedented loan program whereby his property rights are sought to be destroyed and wiped out, without his consent and without compensation, in order that his neighbors might be able to secure personal financial assistance. Such a scheme or transaction was in no sense necessary to carry out the stabilization plan authorized by this statute. And, in this connection, we desire to briefly discuss the reasoning of the majority of the California Supreme Court on this phase of the case, viz.:

(b) The various factual assumptions made by the California Supreme Court (majority) as a predicate for its decision were and are entirely unsupported, unfair and unsound.

1. Assumption That But for This 1938 Raisin Pledge the Raisin Market Would Have Collapsed.

An analysis of the majority opinion of the California Supreme Court will show that the basic premise and keystone of that decision is the following unsupported factual assumption by the Court:

> "Proration alone would not have stabilized prices and insured the raisin industry a fair monetary return, for without available financial support many of the growers would have been compelled by economic necessity to throw their 'free' crops on the market as soon as possible, thus causing a collapse in prices." (R. 109.)

There is not a shred of evidence in the record to support this factual assumption.

Furthermore, it is contrary to the *facts* as shown by Commodity's own answer filed in this case in the Fresno County Superior Court. Attached to that answer is a copy of the resolution (R. 40) adopted by the program committee of this Raisin Zone in 1938, when it decided that there should be a 20% proration for that season. One of the most important (if not the most vital) duties entrusted by this Prorate Act to the Zone's program committee is that of determining in what years proration is necessary, and *just how much of a given crop can,* in such a year, be allowed to freely flow to market without unduly depressing the market. The discharge of this important fiduciary duty requires an investigation and study of a multitude of facts and factors pertaining to crop and market conditions. That is why this statute specifically requires that such a committee be made up of men *familiar with that very industry.* After this study, the program committee determines what percentage of the crop can thus be freely marketed for the given season, and what percentage must be impounded in the stabilization pool and thus kept off the market.

In the discharge of this important statutory duty, the program committee of the Raisin Proration Zone No. 1, after a careful study of all pertinent facts, formally determined and decided on September 12, 1938 that 80% of the 1938 crop could be allowed to go to market unrestricted in time or volume without jeopardizing the market. Thereupon, it promulgated this proration plan for 1938:

"Whereas, pursuant to the provisions of the Agricultural Prorate Act * * * the Program Committee of said Raisin Prorate Zone No. 1 has made an analysis of current and prospective demands, prospective carry over, new crop supplies and other pertinent factors; and

"Whereas, in the judgment of said Committee, in order to adjust the supply of raisins during the 1938-1939 raisin marketing season to market demands, and to stabilize market conditions in the raisin industry, and to insure reasonable prices to producers, proration of the 1938 crop of raisins produced in the Raisin Zone No. 1 is necessary.

"Now, therefore, it is resolved as follows, to-wit:

"1. The Program Committee of Raisin Proration Zone No. 1 hereby determines that proration of twenty (20%) percent of the raisins of all varieties produced in the year 1938 in Raisin Proration Zone No. 1 is necessary during the 1938-39 raisin marketing season to insure reasonable prices to producers.

"2. That proration of twenty (20%) percent of said crop of raisins is hereby determined, effective this date." (R. 40.)

This is *the* record and the only competent record in this case. It is the solemn judgment and findings of this group of "experts" to whom the statute delegated this important function. Any assumption by the Supreme Court of California to the effect that this plan thus determined upon by these experts would not have

been adequate or sufficient to effect the market stabilization (which the Program Committee found and determined it would accomplish), is, we respectfully submit with all due deference, entirely unjustified and unfair.

And, in connection with the foregoing, it is quite significant to note that nowhere in the resolution of the Zone promulgating the proration program for 1938 was there any mention of this loan scheme, or any statement or finding that such a scheme was necessary to prevent market demoralization. As a matter of fact, this loan scheme was not worked out with Commodity until October, and it was not in any way an integral, or any, part of the proration plan put into effect earlier that season. It was simply a private and individual accommodation extended to the growers in line with Uncle Sam's liberal policies toward farmers.

This unwarranted assumption of fact by the California Supreme Court in and of itself is a denial of due process.

What the California Supreme Court did in this case was to simply assume and adopt as true certain claims and allegations made in Commodity's answer in this case. No trial was ever had, nor was any evidence ever produced to sustain these unfounded allegations in said pleading. The Fresno County Superior Court took the position that these allegations were utterly immaterial, and raised no proper or adequate defense to plaintiff's complaint. It accordingly sustained plaintiff's demurrer to such defenses. (R. 73.)

The Supreme Court could point to *no evidence* in the record to support its said assumption. Nor did it seek to show *how many* growers would thus be compelled to "dump" their crop or what percentage of the available "free" tonnage would have thus been jettisoned.

Under these circumstances, it is plain, we respectfully submit, that this action by the Supreme Court in assuming the truth of these allegations without proof or evidence was entirely unjustified, and constituted a denial of due process. Due process will be satisfied by nothing less:

> "That to condemn without a hearing is repugnant to the due process clause of the Fourteenth Amendment needs nothing but statement, and this doctrine applies to every court, and to all kinds of judicial proceedings." (16 *C. J. S.*, p. 1265, § 622.)

As this Honorable Court stated in *Baltimore & Ohio R.R. Co. v. U. S.*, 298 U. S. 349, 80 L. Ed. 1209:

> "The due process clause assures a full hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and have judicial findings based upon it." (298 U. S., at p. 368.)

The settled law on this subject is summarized in *American Jurisprudence* as follows:

> "The right under the due process clause to a full hearing includes the right on the part of the party whose rights are sought to be affected to

> introduce evidence and have judicial findings based upon it. A party has the right to the opportunity, when in court, to establish any fact, which according to the usages of common law or provisions of the Constitution, would be a protection to his property or his liberty." (12 *Am. Jur.*, p. 313, § 621.)

It is clear, therefore, that petitioner was, at the very least, entitled to an opportunity to present evidence on this factual issue which the California Supreme Court considered so important. By the same token, that Court's order to the Superior Court that it dismiss this case (R. 120) was and is unjustifiable. The very most it should have done, we respectfully submit, would have been to remand the case for a trial covering these factual issues which it considered so controlling.

Had petitioner been given such an opportunity to present evidence on this point, he would have been able to supply ample evidence to show the unsoundness of this assumption by the Supreme Court that the 1938 raisin market would have been broken or seriously demoralized if the necessitous growers had not been provided with some personal financing. Anyone familiar with the raisin producing and marketing season knows that such assumption is incorrect. By far the largest part of the crop (over 80%) is customarily marketed during a relatively short marketing season, consisting of the late fall and early winter months. The growers sell their raisins to the packers and other similar distributors, practically all of whom buy their

requirements on an annual basis. The withdrawal of the "surplus" (20%) from the market in 1938 and the impounding thereof with the Zone stabilized that season's market in the sense that it took off the market that portion of the crop which, if freely marketed, might seriously depress or demoralize the market. Under such circumstances the early sale by necessitous growers of their "free" raisins could not have depressed or demoralized the market.

Furthermore, it could be shown that in such a stabilized season ample financing through banks and other private institutions would have been available for such growers as might be in so difficult a financial position as to be unable to carry their crops for the very short period of time encompassed by the average raisin marketing season. In short, petitioner could readily have proved, by competent evidence, that even if some kind of a loan program had been necessary in 1938 to aid the necessitous growers, *it was not at all necessary, in order to protect the raisin market from demoralization, to resort to this particular pledge transaction.*

And, in connection with this matter of providing financial assistance to needy growers, it seems to petitioner that not only has the California Supreme Court made an unwarranted factual assumption to support the basic premise of its reasoning, but, further and beyond all this, that basic premise of the Court is founded upon an entire misconception of the true purpose and philosophy of the Prorate Act. That statute was not intended as a banking program or Morris Plan

for farmers. It was not intended as a means of enabling growers, after their crop surpluses have been taken off the market, to secure, at the expense of their neighbors, temporary personal financing in order that they might the better be able to speculate on the market's fluctuations and thereby make (or possibly lose) a little more on their raisins. The true and the only purpose, we respectfully submit (as well as the only possible constitutional justification) of such proration plans is that of providing *a fair and mandatory plan of enabling such an industry to take and keep off the market, in a year of substantial surplus, that portion of the crop which might demoralize the market.* The majority of the California Supreme Court have, we respectfully submit, with all due deference, entirely misconceived this controlling and limiting philosophy underlying this proration legislation.

2. Assumption by California Supreme Court That This "Surplus" Was "Contributed" by the Growers to the Zone, for Use in Obtaining the Maximum Economic Return on the "Free" Portion of the Crop.

Another important and unfounded assumption made by the majority of the California Supreme Court in this case is that this "surplus" portion of the crop is:

> "subject to the control and disposition of the program committee in attempting to obtain a *maximum economic return* for the prescribed 'free' portion of the regulated commodity * * *" (Italics ours.) (R. 106.)

Wherein does the statute say or imply any such thing? We respectfully submit that it does not. To

the contrary, it plainly appears from this statute that its sole purpose was and is that of keeping the "surplus" temporarily off the market, so as to avoid "breaking" the market and yielding the growers "red ink". Nothing is said therein about achieving or bringing about "maximum" prices, either by rigging the market, manipulating the stabilization pool, or otherwise. The Legislature certainly could not, we respectfully submit, either ethically or legally, authorize a scheme to indulge in any tactics designed to milk "maximum economic return" from the buying public. It is, we respectfully submit with all due deference, surprising to find the high Court of California attempting to read into this statute, and to sanction, a scheme and plan of so controlling the flow of agricultural products to market as to "gouge" from the purchasing public "maximum prices".

If our fundamental jurisprudence is now to be so altered that such "price rigging" schemes can be lawfully carried on, we believe that this Honorable Court should so itself state, so that the butcher, the baker and all other merchants can take advantage of such schemes to force "maximum economic returns" out of "the public" (i.e., this same group for whose welfare this legislation was supposedly adopted under the police power).

Of course, the Prorate Act says nothing about any such maximum price schemes, and an earlier California Supreme Court made a much more accurate and fairer appraisal of the true scope of the Prorate Act when it stated:

"The theory of the Prorate Act may be briefly stated as follows: There is an overproduction in many agricultural products of the state. That unless the marketing of the commodity in case of its overproduction is controlled and regulated by the state so that the amount of such product to be produced, harvested, and marketed *is limited to the amount reasonably necessary to supply the requirements or demands of the market for such commodity,* the price of the commodity becomes depressed and drops so low that the market returns do not equal the cost of production." (*Agricultural Prorate Commission v. Superior Court,* 55 P. (2d) 495, at 507, 5 Cal. (2d) 550.)

3. **Assumption by the California Supreme Court That the "Surplus" Portion of the Crop Is "Waste".**

Commodity constantly sought, in its presentation of this case to the California Courts, to make it appear that under this Prorate Act the grower, in delivering his "surplus" portion of the crop to the Zone, in effect makes a "donation" or "contribution" of it to the public cause. This position is well epitomized by the following statement in Commodity's brief filed in the California Supreme Court:

"The surplus is contributed with practically no strings attached". (Appellant's Opening Brief, p. 26.)

The California Supreme Court likewise adopted this view, but even went further and assumed that this portion of the crop was "waste".

"The surplus represents—in the language of the statute 'agricultural waste'—and is subject to the

control and disposition of the program committee * * *" (R. 106.)

"In short, the proportion of the crop which each producer must deliver to the stabilization pool *represents a contribution* to the economic stability of the zone—a contribution predicated upon *its relative economic worthlessness* and in consideration of a fair return on the 'free' marketable balance." (Italics ours.) (R. 106.)

These assumptions are, we respectfully submit, incorrect and unfounded. Nowhere therein does the Prorate Act state or indicate that the so-called "surplus" is "waste" or worthless. To the contrary, the plain purpose of this statute is that of preventing just such "agricultural waste". The California Legislature, in enacting this novel and stringent program of interfering with the age-old right of the farmer to control his own crops and sell and dispose of them as he sees fit, well knew that the prorated portion of the crop, to be impounded with the Zone, might very well be quite valuable. It knew also that in certain types of nonperishable crops (such as raisins, nuts, etc.), substantial portions of such "surplus" might be carried over from year to year, and, by skillful merchandising by the Zone officials, yield real profits. It also knew that due to market and crop changes in the same year, what might be "surplus" at one stage could very well become needed and valuable "merchandise" at a later stage of the season.

For all of these reasons and others, the Legislature set up a specific statutory trust arrangement where-

under such a Zone is obligated to receive and hold these valuable assets in trust for the contributing growers. This phase was aptly summed up by the California District Court of Appeal in its opinion in this case:

> "This language clearly imports an agency on the part of the Zone and its Proration Program Committee to receive and dispose of the raisins in the stabilization pool for the benefit of the growers who are the owners of at least an equitable interest in them. It also creates the obligation to account to the growers for the net receipts, if any, derived from the disposition of the surplus raisins * * *"
>
> "Defendants argue that the relation created is not a trust * * * This argument lacks convincing force and is not borne out by the clear language of the statute. Whether the relationship created be called that of a trust or by some other name, it possesses the characteristics of a true trust. The corpus is created and is composed of the surplus raisins in the stabilization pool. This corpus is placed in the possession of the Proration Program Committee with the power of sale or other disposition under the limitations imposed. The Proration Program Committee is required to account for the same on a pooled basis to the beneficiaries who are the growers having surplus raisins in the stabilization pool." (140 P. (2d) 53, at 63.)

It must be remembered, in connection with all of this, that we are dealing in this case with a nonperishable crop, one that is admirably adapted to being warehoused and held for long periods of time (years) to

await changes in the market conditions. As a matter of fact (if this issue is material and relevant), petitioner stands ready to prove that portions of this very 1938 crop were warehoused and held for a couple of years and then brought a price over twice the price prevailing in 1938.

In short, the "surplus" portion of these prorated crops is not intended by this statute to be considered as, "agricultural waste". Such "surplus" is a very important part of the farmer's crop, to be exploited with the object of yielding him as much additional revenue as possible.

And, in this connection, it should also be noted that under this prorate statute the percentage to be impounded could conceivably be fixed at 50% or even 80% instead of 20%. In other words, we must not at any time lose sight of the fact that we are dealing herein with a novel and drastic statute which empowers a Zone to put into effect and enforce, by legal mandate, a program which requires a farmer, after he has by hard work, money and worry produced a crop, to yield up control of a substantial part of it, *the exact percentage to be determined by others.* Certainly, with such a statute and situation involved, the scope and effect of this drastic legislation should not, we respectfully submit, be stretched and extended, under the guise of "police power", by resorting to such unfounded and unjustified factual assumptions as were made by the California Supreme Court in this case.

"Statutes * * * which impose special restrictions or burdens or confer special privileges upon certain individuals or groups of individuals separate and apart from the rest of the community * * * are to be strictly construed; and as a result, they must not be extended beyond their literal meaning. They can be applied only to cases clearly falling within the statutory provisions.

"Statutes pertaining to the exercise of a trade or profession, to eminent domain, to the restraint of personal liberty, or freedom of contract, and the like, are statutes in derogation of common right and subject to strict construction." (*Crawford, Statutory Construction*, 1940, p. 481, § 246.)

In connection with the aforementioned remarks as to the importance of the duty imposed upon these Zone officials of controlling and handling the disposal of this "surplus" portion of the crop for the benefit of the growers, we desire to amplify one other point briefly touched upon in our petition herein, viz.:

This pledge transaction was fundamentally inconsistent with the basic spirit and purpose of the Prorate Act because it involved an attempted delegation of trust duties of the Zone officials to strangers.

Under this Prorate Act, the grower is compelled *by law* to entrust the fate of a part of his crop to the Zone as his trustee. As shown above, the Zone, acting by and through its Program Committee, is under a strict fiduciary and mandatory duty to try to market these surplus crops to the best advantage of the growers, when and if this can be done without unduly depressing the market.

Who is this Program Committee which is thus charged and entrusted with these important fiduciary duties? A reference to the prorate law will show that one of the salient features of this legislation is that *this committee shall consist almost entirely of growers* (five out of seven members). (Section 18.)

The reason for this is plain. It obviously was the purpose and intent of the Legislature (in enacting this novel and stringent law under which a farmer is deprived of his power to fully control and dispose of his crop) that *a group of farmers should control and manage the affairs of the surplus pool and all other matters incident to the marketing program.* The wisdom of this requirement is obvious.

The pledge transaction which the California Supreme Court attempts to justify in this case as a proper exercise of police power, violates this express objective of the statute because it represents an unlawful delegation and abdication by the Program Committee of these important fiduciary duties. A glance at the pledge agreement (R. 41) which the Program Committee undertook to enter into with Commodity reveals this attempted delegation and abdication. That agreement provides, among other things, that:

> "Commodity may sell all or any part of the pledged raisins at any time, without demand or notice, at one or more pledge sales (which may be public or private, as determined by Commodity) *on such terms and for such prices as Commodity may deem fair* * * *." (Italics ours.) (R. 43.)

In other words, the Program Committee, under this arrangement, gives Commodity unlimited and unfettered power to dispose of these valuable assets belonging to Mr. Dickey and his fellow growers.

We believe it requires no extended argument to demonstrate the absolute impropriety of this attempted delegation of authority. This power to decide when, how and for what price the raisins in the stabilization pool shall be sold is, as shown above, one of the most important aspects of these fiduciary duties imposed upon the Program Committee by this statute. This fiduciary duty is particularly important in our case because we are dealing with a crop (raisins) which is not perishable, one that is admirably adapted to the exercise of skill and shrewd judgment in the determination of the various factors which govern the marketing thereof; a crop which can be warehoused and held for an extended period to await changes in the market conditions. The discretion involved in deciding how long and under what conditions to hold the crop, or portions of it, and when and how to market it is a fiduciary power and duty of paramount importance to the grower, one which directly translates itself into red or black ink, depending upon the ability, skill and *fidelity* which govern the exercise of such discretion.

To permit a transfer or delegation of this function to third parties (as this pledge purports to do), not only flies squarely in the teeth of the plain language of this prorate statute, but likewise contravenes fundamental rules of the law of agency.

It is, of course, an elementary rule of the law of agency that an agent entrusted with fiduciary duties cannot delegate them without the consent of his principal, viz.:

> "The general rule is that an agent in whom is reposed trust or confidence, or who is required to exercise discretion or judgment, may not intrust the performance of his duties to another without the consent of his principal, and since nearly all acts of agency involve discretion, and the very selection as agent ordinarily implies personal confidence in the agent chosen, it follows that one clothed with authority to act for a principal must ordinarily perform the act himself, and cannot without the principal's consent delegate it to another; or, as is frequently stated, an agent cannot delegate powers calling for the exercise of discretion, skill, or judgment, or to do acts that are not merely clerical, mechanical, or ministerial in their nature." (2 *Corpus Juris,* p. 685, § 342.)

This rule is particularly applicable to public or quasi-public officials. (46 *Corpus Juris,* p. 1033, § 291; 21 *Cal. Jur.,* p. 881, § 63; *Knight v. Eureka,* 123 Cal. 192; *Scollay v. County of Butte,* 67 Cal. 249.)

California Jurisprudence sums up this settled rule of law as follows:

> "§ 63. Delegation of Powers.—As a general rule, boards and public officers, in the exercise of powers conferred upon them, may appoint agents to discharge ministerial duties not calling for the exercise of reason or discretion. But they cannot go beyond this and delegate to others duties, the discharge of which, calling for the exercise of

reason and discretion, are regarded as public trusts." (21 *Cal. Jur.*, p. 881, § 63.)

It is clear, we respectfully submit, that the attempt of the Program Committee to thus abdicate these important fiduciary duties in favor of Commodity Credit Corporation is invalid and directly contravenes the prorate statute. It follows, therefore, that such a transaction certainly cannot be justified under any theory of "police power".

And, in connection with this phase, we desire to point out two things. The first is that it is no answer to argue that the Commodity Credit Corporation is a public agency, an arm of the United States Government. That fact does not justify this delegation. The California Legislature intended and stated that the California farmer was, *at the very least,* to have the protection and assurance that the fate of his assets, and the business of this Zone, would be controlled and determined *by his own fellow growers.* This obviously does not mean that these important matters are to be decided by a group of federal employees back in Washington, no more than it means that such functions could be discharged by the Department of Agriculture of Idaho.

Furthermore, there are very cogent reasons why this particular attempt to delegate this important function to the Commodity Credit Corporation (or any other similar federal agency) was a most dangerous step for the San Joaquin Valley raisin producers, one fraught with various perils. As the record

(and appellants' own brief) plainly shows, it has been the practice of the Commodity Credit Corporation to dispose of the raisins pledged to it, in large lots *to other branches of the federal government.* For example, a substantial part of the 1938 raisin crop thus pledged to the Commodity Credit Corporation *was sold by it to the Federal Surplus Commodities Corporation.* The same thing happened in 1940. (Commodity's Brief, p. 28, footnote.)

In short, government officials in Washington, in charge of the affairs of the Commodity Credit Corporation sit down (no doubt amidst other pressing business) and decide to sell these pledged raisins to another branch of the government. *They* fix the price. Neither Mr. Dickey nor his fellow growers, nor even their chosen representatives (the Program Committee), have a word to say as to this, an important aspect of their business. Then, the Commodity Credit Corporation, having thus disposed of these raisins, turns around and in effect tries to hold the assets of Mr. Dickey and his fellow growers for the "deficiency" resulting from this transaction, or series of transactions.

We are confident that it requires no extended argument to convince this Honorable Court that such a plan certainly is not in consonance with either the letter or basic spirit and purpose of the Prorate Act. Likewise, we believe it requires no extended argument to convince this Honorable Court that the farmer's best interest is served only by placing and leaving the control of his assets and crops in the

hands of himself and his fellow growers, acting through their Program Committee. The California Legislature so concluded, and it made it plain in this statute that this was to be the plan and program.

Incidentally, Commodity claims it sustained a large loss on this 1938 program because it loaned too much to the borrowing growers, an alleged fact upon which the majority opinion of the California Supreme Court lays stress. (R. 101.) This alleged "loss" arose in just such manner as we have just indicated, and by just such "wash" sales. Had not Commodity usurped, by this unauthorized pledge transaction, the fiduciary duties and functions reposed by the California Legislature in the Zone officials, the California raisin growers would have been much better off, and Commodity would not now be trying to penalize Mr. Dickey and some four thousand other growers for its mistakes.[1]

---

[1]Incidentally, an examination of the various papers executed in connection with this pledge will indicate, we believe, that no one knew better than the officials of Commodity Credit Corporation that this purported pledge of the stabilization pool raisins was a very questionable transaction, so much so that it took particular pains to see *that each grower who borrowed on his crops was required to specifically hypothecate his stabilization pool raisins.* To procure such a loan, he was required to sign a so-called "Growers Marketing Agreement" (RPA-1) wherein, in addition to hypothecating his "free" tonnage, he also did the following:

> "The grower hereby authorizes the Association and/or the Program Committee for Raisin Proration Zone No. 1 to pledge or hypothecate any or all raisins delivered by him to the prorate stabilization pool, as security for any loans or advances made thereon by Commodity Credit Corporation or other institution for the handling and storage of such stabilization tonnage and also as an additional collateral for any loans or advances that may be made by Com-

CONCLUSION.

The constitutional questions involved in this case are important ones. The invasion and impairment of innocuous property rights herein are so drastic and severe as to be tantamount to confiscation. The sanctioning by the California Supreme Court of such confiscation under the theory of "police power" is, we respectfully submit, so dangerous a precedent as to deserve the careful consideration of the Honorable United States Supreme Court. Petitioner therefore respectfully requests an opportunity to fully present these constitutional questions to this Honorable Court, and prays for its intervention herein by certiorari.

---

modity Credit Corporation or other institution to raisin growers or to the Association."

Also, particular note should be made of the meticulous phrasing the "Pledge Agreement", viz.:

> "The Committee agrees that it *will acquire* from producers all surplus raisins as determined under the terms of said order." (R. 42.)

The lawyers for the government, no doubt well realizing the invalidity of any direct attempt to hypothecate the stabilization pool raisins without the growers' consent, apparently inserted this language so as to obligate the Program Committee *to acquire* these raisins so that it would be in a position to duly hypothecate them. As a matter of fact, an examination of the resolution of Commodity Credit Corporation (R. 44) will show that the matter of the hypothecation of these stabilization pool raisins was given little attention. The *only* reference to it is the provision of paragraph 4 to the effect:

> "That there be delivered to the Custodian the pledge agreement, in form satisfactory to counsel for Commodity, of the Association and the Program Committee for Raisin Proration Zone No. 1 covering the *acquisition and pledge* of all surplus raisins." (R. 46.)

In other words, while the details of the loan on the "free" tonnage are meticulously set forth in, and prescribed by, this resolution, the matter of the stabilization pool raisins is but lightly touched upon.

Your petitioner fully realizes that, in the words of Rule 38 of the Supreme Court (Section 5): "A review on writ of certiorari is not a matter of right but of sound judicial discretion, and will be granted only where there are special and important reasons therefor". But it is submitted that these special and important reasons are clearly present here. Furthermore, this case comes well within the specification of subsection (a) of Section 5 of Rule 38, in that it presents a situation "where the state court has decided a federal question of substance * * * in a way probably not in accord with applicable decisions of this court" (i.e., the Supreme Court of the United States). Your petitioner has heretofore indicated that the holding by the Supreme Court of California, in the instant case, to the effect that the property of petitioner may be taken without his consent to secure the debt of a wholly different person seems to contradict a whole line of decisions of this Honorable Court which declare similar takings to be in violation of the Fourteenth Amendment to the Constitution of the United States.

Your petitioner seeks, at this stage, merely an opportunity to present fully to this Honorable Court the reasons that urge him to ask a reversal of the decision of the Supreme Court of California. It will be petitioner's first opportunity to be heard in defense of his constitutional rights.

This Court has, as the record shows, been ever ready and vigilant to protect the rights and properties of citizens against improper "police power" ef-

forts. It has stricken down many legislative plans and programs, even in the face of express and positive legislative declarations that such programs were necessary to promote the public welfare. It is submitted that this Honorable Court should be even more ready to intervene in a case, such as ours, where the unlawful deprivation of property is predicated, not on any plan or program expressly authorized by the statute or declared by it to be necessary for the public welfare, but upon an "implied police power", read into the statute by a process aptly characterized by Justice Marks of the California District Court of Appeal as:

> "Judicial legislation of the worst kind." (140 P. (2d) 65.)

Dated, San Francisco, California,
February 14, 1945.

Respectfully submitted,
WALTER M. GLEASON,
MAX RADIN,
MORGAN J. DOYLE,
Counsel for Petitioner.

(Appendix Follows.)